Lewis County Planning Commission

Public Meeting

Lewis County Courthouse
Commissioners' Hearing Room – 2nd Floor
351 NW North St – Chehalis 98532

May 8, 2012 - Meeting Notes

Planning Commissioners Present: Clint Brown, Richard Tausch, Jim Lowery, Arny Davis, Russ Prior, Mike Mahoney
Planning Commissioners Absent: Bob Guenther
Staff Present: Glenn Carter, Jerry Basler, Pat Anderson
Consultants Present: Mike McCormick
Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes from April 10, 2012
- Planning Commission Rules of Procedure and Bylaws
- Land Use Maps and Zoning Map for Forest Resource Lands

1. Call to Order
Chairman Lowery called the meeting to order at 7:01 p.m. The Commissioners introduced themselves.

2. Approval of Agenda
There were no changes to the agenda and it was approved as submitted.

3. Approval of Meeting Notes from April 10, 2012
The Chair entertained a motion to approve the meeting notes. Commissioner Prior moved to approve the notes, Commissioner Tausch seconded. The motion carried.

4. Old Business

A. Discussion on proposed changes to the Bylaws

Mr. Basler stated there had been previous discussions about changing the start time of the Planning Commission meetings from 7:00 p.m. to 6:00 p.m. One issue is staff time – the office closes at 5:00 p.m. and to move the meeting up to 6:00 would be helpful. There is also a matter of history. When the Planning Commission was working through the agricultural resource land issues it affected much of Lewis County and the later start time allowed people from the east end and west end to participate. Mr. Basler thought there could be some flexibility in the language to change the meetings to 7:00 pm if that was necessary. Once the Planning Commission makes a decision, the changes will need to be approved by the BOCC.

Chairman Lowery asked if there were any comments from the Planning Commission.

Commissioner Prior stated that Commissioner Grose would like the time changed to 6:00 pm because that would enable him to attend some of the meetings.

Commissioner Mahoney agreed with a start time of 6:00; however if there was a special public hearing that needed to be held in Morton or Toledo, could the start time be 7:00? Mr. Basler stated that flexibility could be included in the language, and Mr. Johnson had mentioned that flexibility also.

Chairman Lowery agreed with Commissioner Mahoney. He thought there should be some language to change the time, even to 2:00 or to a Saturday if that is what is best for the public. These meetings are for the public's convenience, not the Planning Commission's.

Commissioner Mahoney stated the regular meetings could be at 6:00 and a public hearing could be set for whatever day of the week and whatever time. If there is a big hearing we might want to have an afternoon meeting, as long as that flexibility is there for the public.

Commissioner Brown agreed with the 6:00 start time. He asked if Mr. Basler could have draft language at the meeting on the 22nd. Mr. Basler stated he could do that.

5. New Business

A. Workshop on Comp Plan Land Use and Zoning Maps for Forest Resource Lands

Mr. Basler stated the maps concern the Forest Resource Lands (FRL) in Lewis County. He asked Glenn Carter and Mike McCormick to attend to give background and answer questions.

Mr. Carter stated in 1996 the County created two classifications: Forest Resource Land of Long Term Commercial Significance and Forest Resource Land of Local Importance. Both are Forest Resource Land of Long Term Commercial Significance for purposes of the GMA and those lands are preserved as natural resource lands.

Those two classifications were created in 1996 and were codified into Lewis County Code. The difference, as far as the petitioners are concerned, is one classification can be developed 1 (dwelling unit) in 80 (acres) (long term) and the other one can be developed 1 (dwelling unit) in 20 (acres). For our purposes, the County could only designate Long Term classification – that was the only classification available to the County when it first designated and classified FRL in 1996. In the regulation created at that time the FRL of local importance was an opt-in, available only by the voluntary choice of the landowner. Various land owners in 1996 and 1997 elected to opt in.

Mr. Carter stated that he, and probably most other people in the room, did not work for the County in 1996 and did not remember that there were people who opted in and who were permitted to opt in. This was discovered after the order had been entered by the Growth Board by Mr. Steve Stinson, whose family is part of the Family Forest Foundation. The County has to correct that error. Those properties opted in and were classified as Local Importance but that was not reflected on the land use maps or zoning maps and that needs to be corrected as part of compliance.

The Growth Board, when it looked at how we interpreted these classifications for purposes of the Mineral Lake property, said the County reclassified the Mineral Lake property as local importance upon their opt-in request, and they thought there may be other properties that should also be designated as local importance under that interpretation. The Growth Board said the County's interpretation is going

to result in mapping inconsistencies because the County classified certain land as local importance and the Growth Board sees other properties that should be classified as local importance. They sent it back with the order that the County has to correct those inconsistencies. Tonight we are holding a workshop for the Planning Commission to ask questions about how we propose to address the alleged mapping inconsistencies.

Mr. Carter stated the County has appealed the decision of the Growth Board. The briefs have been filed before the Superior Court in Thurston County and those will be heard on May 25. If the Superior Court finds that the Growth Board acted incorrectly and reverses the Growth Board, that may be the end of the matter and we may not proceed with the compliance matter. If we are upheld by the Superior Court we are going to go with what the Court of Appeals say. Under the law, we are required to initiate compliance and if for some reason we do not prevail on appeal, our proposal on compliance is to go ahead and correct the mapping errors, with respect to the properties that were classified as local importance and that our maps failed to reflect. We are also going to take an approach with respect to the land use map that is different from what we have done in the past. Our land use maps reflect both classifications of FRL under the GMA. Our proposal is that in the future the land use map will only reflect the FRL designation and will not distinguish on the land use maps between FRL of Local Importance and FRL of Long Term Commercial Significance. Under the WAC they only require the mapping of the designations; they do not require the mapping of the local classifications. The land use maps with respect to FRL would show just FRL – the Mineral Lake would be shown as FRL as would other properties that are not local importance would also be shown as FRL. On the zoning map the differences would be shown; it would show the classifications: local importance for Mineral Lake, etc. and the Long Term Commercial Significance would be shown as well.

In addition to those changes to the maps, the last element of our proposed compliance is to include a definition of “contiguous”. We had asked the Growth Board to clarify what it was they thought we ought to do on compliance. They provided a couple of different alternatives. 1- Go back to Mineral Lake and make it FRL of Long Term Commercial Significance. 2- Make changes with respect to the regulations or with respect to our Comprehensive Plan that would remedy those kinds of inconsistencies. 3- Go back and reclassify all the other lands that might be FRL of Local Importance and cure the inconsistency by designating those. With respect to the last, we cannot do that because it is an opt-in, voluntary change. That classification was codified after 1996 and it was never appealed. It is a final regulation and that is the basis of our appeal to the Superior Court from the Growth Board order. It is a final order and it cannot be collaterally attacked at this time. Mr. Carter believes that is a winning argument.

With respect to the alternatives that we are left with, the one we have chosen to propose to the Planning Commission is to remedy the perceived vagueness of the term “contiguous” in the regulations. At the heart of the interpretation that was made with respect to the Forecastle property, it is whether that property was contiguous to a 5,000 contiguous acre block of FRL of Long Term Commercial Significance. The criteria that were argued at the public hearing were public rights of way: county highways, state highways, railroad rights-of-way, water bodies, such as rivers and tributaries. The proposal is not to change what contiguous means for purposes of what was applied in the Forecastle case; it is to put into words, as part of that regulation, what the definition was that was applied by the BOCC, and which interpretation or meaning was approved by the Growth Board to the extent that the Board found that the interpretation was consistent with and implemented the Comprehensive Plan. What they found further was it created the mapping inconsistencies. If we have the definition of contiguous that adopts and incorporates into what was done in the Forecastle case, it should go most of

the way to satisfying the Growth Board that there is now a standard by which to apply the FRL of local importance.

Commissioner Mahoney stated, from a land use perspective, whether it's long term commercial significance or local importance, doesn't make any difference and the language will not change that. Mr. McCormick stated that was correct.

Commissioner Mahoney asked if any piece that is now long term commercially significant, can the owners apply to have that changed to local significance without changing the 5,000 acre block.

Mr. McCormick stated no, the 5,000 acre minimum block size is still a factor. Any property owner that meets six of the eight requirements for FRL can request that they be designated forest lands of local importance. Two criteria that have been excluded, and the one that is most significant is the one that talks about the amount of development that is adjacent to it. That is probably why (Mr. McCormick stated he was not involved at the time) some of those properties that have opted in were not initially included by the County when the original designations were made because there was too much parcelization around them and based on that, they would not be included initially in FRL of long term commercial significance. All of those other parcels came in as the result of a request from a property owner. A number of those are isolated; they are in the middle of rural designated lands but they met the six criteria. Any property owner that currently has FRL of long term commercial significance has the right to request a zoning change to local importance. They are still forest resource lands for the purposes of the resource land requirement designation; they are subject to different rules but they still have to meet the criteria and there is no guarantee if they don't meet those criteria that they will get that designation. It has to be initiated by the property owner.

Commissioner Mahoney stated any property owner could initiate that. Mr. McCormick stated they can currently be designated and ask to go from long term commercial significance to local importance, or they can be a rural property owner. There is still the option for a rural property owner to ask to be included as local importance.

Mr. McCormick stressed that the County is not reducing the amount of FRL in Lewis County. What we are doing here has no effect on the total amount of land in FRL.

Commissioner Tausch asked what the people who opposed the group changing the designation to local importance, in light of this new information, will say to combat that.

Mr. Carter stated this information came to light by talking to Mr. Stinson. The petitioners most likely read those minutes and introduced them in their response brief before the Superior Court. In our reply, we added the information that they had omitted what we felt needed to be added to give a complete picture to the Superior Court.

Mr. McCormick stated we are doing parallel tracks. We are responding to the remand and there is an appeal. With regard to what we are doing here tonight and responding to the remand, he did not want to put words in the mouths of the petitioners. There will be a public hearing on this and they will have the opportunity to make their own presentation and that will be part of your deliberations before it goes forward as a recommendation to the BOCC.

Commissioner Brown asked for clarification. There are three issues. One is there are discrepancies because of land parcels that opted in that the county was not aware of. He understands that is a non-issue, that they will be included. Mr. McCormick stated those are mapping errors and they will be corrected.

Commissioner Brown stated another issue is to correct the inconsistencies due to the definition of contiguous lands. Mr. McCormick stated that the changes that are being made to the map eliminate the inconsistencies. We are causing the inconsistencies that the Board saw to disappear. We have explained how they were created and why they are different at the zoning level, but they are all FRL.

Commissioner Brown stated his question is: if we change the definition of contiguous because of the area around Mineral Lake, will we open up issues throughout the rest of the county.

Mr. Carter stated the County is clarifying the definition that was applied by the Board in the Forecastle case. It is a clarification of a term that was not expressly defined in the regulation when it was adopted.

Mr. Carter said it should not create problems. The decision made in the Forecastle case has triggered a petition where the allegation is that it has created problems in the rest of the county. That determination, based on what the petitioners said in their filing with the Growth Board, and as the Growth Board interpreted it, was that by virtue of making the change there, there are other pieces of property around the county that ought to be changed. The flaw in that is that it is a voluntary opt-in and that the regulation is final and was found to be compliant many years ago. That should not be an issue. It has an inherent inconsistency at the time it was drafted in 1996 because it permitted the owner to elect whether to opt in or not. Some would not opt in so there would always be inconsistency. The County takes the position that this is a collateral attack on something that is final; something that was accepted and not appealed at the time.

Going back to Commissioner Brown's question, they take the position that these other problems have been created for the rest of the county. The Growth Board is concerned about what we do in the future. The idea behind the clarification of the definition is to provide a standard, in writing, that can be applied by future BOCCs so there is consistency. There is a question as to whether we should even bother to define it, and that has also been explored.

Commissioner Brown asked what would happen if nothing was done.

Mr. McCormick stated the option would be to do everything we were asked except to not adopt the definition of contiguous, that we would go forward with what is currently in place as it has been interpreted. After discussion, the collective wisdom is it would make things clearer in the future to have what we believe is the definition that has been used clarified and added to the Lewis County Code.

Mr. Carter stated the point we want to make is, if we do adopt the clarification, it is not a new action. We are not doing anything new after the Forecastle decision. This is purely a clarification of what was already done and it should not be a new action for purposes of SEPA or anything else. From our point of view, the Growth Board is looking for some kind of standard that can be applied in the future on a consistent basis by planning commissions through the future and they may prefer to have a clarification of what it was that we did in the Forecastle case.

Commissioner Brown asked if we adopt this clarification then that will be applied prospectively. Mr. McCormick stated he believes it has been applied in the past. It was applied in the Forecastle case and it will be applied in the future. He does not believe that this is stating anything different than what has been applied in the past up until now.

Mr. Carter stated it is what we did in the Forecastle case. The division of the Forecastle property by Highway 7, Mineral Creek, the Nisqually River, the railroad, those are the rights of way that separate. Mineral Lake is subject to the Shoreline Management Act. All of these are already part of what defines the division, and what is not contiguous in the Forecastle case. In response to Commissioner Mahoney's comment, Mr. Carter believes that the eligible properties that would fall into local importance are not very extensive. In answer to another question, if you look at the properties that were classified (different from designation, which is the natural resource category) as local importance or long term commercial significance, there are properties south of Mossyrock that are individual lots owned by the Stinson family. They are contiguous, by anyone's definition, to large 5,000 acre blocks, and yet they were classified by the BOCC in 1996 as FRL of local importance. That is partly because of parcelization, or rural settlements, which were most of the reasons pointed out by the BOCC in the Forecastle case. The Growth Board is looking for something that can be applied consistently because we do have turnover in our county: the BOCC, the prosecutors, and planners all change, along with the institutional memory. If something is written into the regulations it might help to minimize the loss of institutional memory.

Commissioner Prior asked why someone would want to have their land classified as local importance.

Mr. McCormick stated there is the opportunity to be in timber tax, or special use tax, and if you are classified local importance it would make it clear that it is your intent. There are also some protections that are provided in Lewis County Code if you are a timber owner and you have a FRL designation, such as notices that are put on land sales adjacent to resource lands; and protections for the practice and application of certain forestry techniques. There were not a lot of applications, perhaps 13 or 14 separate pieces, amounting to about 2000 acres. We have not seen activity in that since 1997.

Commissioner Prior stated someone mentioned a staff report and he did not see one. Mr. Basler stated it was in the Commissioner's binders for the May 22 meeting. Mr. McCormick stated the staff report is quite short and reflects how significant this is overall. From his perspective, this is not a big deal. We are fixing a mapping error, we are providing a definition to make it easier in the future, and we are removing from the map something that looks to present an inconsistency where we believe none exists.

Commissioner Prior stated that Mr. Carter said if the County wins the appeal that this whole issue goes away and we may not do anything. He's also hearing from Mr. McCormick that the maps will be changed.

Mr. McCormick stated one of the changes to be made, regardless, is how the designations are shown on the future land use map. At the staff level, it is prudent to have a more general designation category and that is reflected in what is in front of the Commission tonight. Even if we won at the Superior Court level, it still might make good policy sense to do this, but we would not have to.

Mr. Carter stated we want to preserve our options. He doesn't know how the Superior Court is going to rule and if the Superior Court rules in our favor, it could be appealed to the Court of Appeals and the

Court of Appeals will take a year or more to get a resolution. He wants to preserve on the record that if we do prevail on that that we preserve all of our options with respect to what we do. The compliance that we are undertaking is compliance with the decision of the Growth Board that we think is in error. Mr. Carter does not want to sign off on this process without reserving the option to see how the Court of Appeals rules.

Mr. McCormick stated he felt there was an advantage to the County solving the problem with the Hearings Board and removing this issue; that way the County is in compliance and avoids a lot of other problems. You can still go ahead with your judicial appeal and keep your options open and make a decision when ultimately that's decided by the Superior Court or a higher level. He likes to see the County in compliance with the Growth Board, and he's sure the County Commissioners would feel better about that.

Commissioner Prior said he would like to see as accurate a map as possible. He asked if changing the mapping to include the people who opted in in 1996 would be an onerous task. Mr. Carter stated no, the mapping error was an error and we are correcting that and it will never change. It will be changed regardless of the outcome of the hearing. The only questions would be the definition of contiguous. He wants to preserve the option because if it is not on the record then the question may be raised later that you committed to this compliance process, regardless of what happened on appeal.

Mr. Basler stated regarding the mapping that a lot of the work has been done by the GIS department and Matt Hyatt and that they have done a great job.

Chairman Lowery clarified that what would happen is the mapping errors would be corrected – those properties that opted in to Local Importance, and the definition of contiguous. Mr. Carter stated the land use map will show only FRL and the zoning map will show the distinction between the two classifications.

Chairman Lowery stated he has a little problem with saying all forest lands are forest lands. There is a big difference between 1 in 80 and 1 in 20. Forecastle did not want 1 in 20 for no reason. He feels there were some development concerns in mind and it didn't fit with what we were talking about at that time. This does need to be cleared up and it needs to be shown on the map and he thinks the County needs to be careful about how many it allows.

Commissioner Brown asked for the proposed definition of "contiguous". Mr. Carter stated on the second page of the staff report it reads: '"Contiguous" for the purposes of this Chapter means land adjoining or touching by common corner or otherwise. Land divided by improved public rights-of-way or railroad rights-of-way or bodies of water subject to the Shoreline Management Act shall not be considered to be contiguous.' Mr. Carter stated this is the proposed language and it would be the new section 17.30.115 in the Code.

Chairman Lowery asked if there would be another workshop before the public hearing. Mr. Basler stated he expected the public hearing to be set for May 22. Chairman Lowery stated he is not comfortable with that. This is the first the Commissioners have seen the staff report and he would like a chance to study it. A public hearing could be set and let the public speak and discuss it in a workshop.

Mr. Basler stated this needs to go before the BOCC on June 4 so the County is in compliance with the Growth Board's decision.

Chairman Lowery stated this is an important issue and he does not want to feel hurried through it. Commissioner Prior agreed. He stated the agenda said there would be a workshop on the comp plan land use maps and zoning maps. It said nothing about FRL or the long term commercial significance or local importance. He is not ready for a public hearing in two weeks.

Chairman Lowery asked the reason for the deadline. Mr. Carter stated the Growth Board ordered that the County comply by June 14. In order to meet that date, the BOCC would have to hold their hearing and make their decision on June 4. In order to meet that date, the Planning Commission needs to hold its public hearing on May 22. If the Planning Commission believes it needs the additional time, Mr. Carter would need to file a motion with the Growth Board to ask for additional time to comply. The County has filed one motion with the Growth Board and did receive an extension but that does not preclude the County from filing a second motion.

Commissioner Mahoney asked if there was any reason why the public hearing couldn't be held on the 22nd and followed up with a workshop immediately afterwards. If it all comes together we can make our recommendation on the 22nd. Is there anything else on that agenda that needs to be discussed? Mr. Basler stated the only discussion would be the meeting time in the by-laws.

Commissioner Mahoney stated he wouldn't anticipate more than four or five people testifying on this issue. He thought the Commission could hold its public hearing and then have a workshop and that would be enough time to come up with a recommendation.

Commissioner Brown asked if an extension could be asked for from the Growth Board and go forward with a public hearing on the 22nd.

Mr. McCormick stated that could be done, or we could wait and see what happens on the 22nd and if there is a need for an extension the request could be made at that time. Mr. McCormick could alert the Board that there may be a need for an extension and not submit it until after the 22nd. The Hearing Board would appreciate knowing that might happen. He did not think that the Board would not grant a reasonable request; they have no way to remedy the problem themselves other than to make a recommendation to penalize the County to the governor and Mr. McCormick was quite certain that the governor would not entertain that, and he didn't think the Board would ask.

Commissioner Mahoney made a motion to set the public hearing followed by a workshop on May 22 on the Forest Resource Land. Commissioner Tausch seconded. The motion carried.

7. Good of the Order

Mr. Eugene Butler stated he is a litigant in the Mineral Lake case. Speaking for himself, he would not object to the continuance and he doubted if the Friends of Mineral Lake would object.

Looking at the proposal to retain the existing comprehensive plan map enacted in 1996 as the comp plan map seems fine to him. The correction to add the local importance decisions (about 2,000 acres) to the zoning map also seems like an appropriate thing to do. His quarrel in what is being proposed is going to rest on the decision of whether you amend the word "contiguous". The first sentence of the

definition is what he believes is the proper definition of contiguous, and that is consistent with the existing general provisions of the zoning code. He does not, however, agree with the second sentence. There will be some 30 areas in the County that are now zoned long term importance and are planned as long term importance that would be inconsistent with the proposed definition in the second sentence. This is a major issue when you are talking about consistency and the effect of a proposed revised definition simply to satisfy the Forecastle Timber Company. He would have a problem with that and would assume that would be discussed at greater length.

No one else wished to speak.

8. Adjourn

A motion was made and seconded to adjourn; adjournment was at 8:06 p.m.